

The Administrative Law Judge awarded claimant permanent partial disability benefits under the "scheduled injury" statute, K.S.A. 44-510d, for an injury to the right shoulder. Claimant requested this review and contends K.S.A. 44-510d(a)(13) is unconstitutional. That is the sole issue presented by the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be affirmed. The Appeals Board is not a court established pursuant to Article III of the Kansas Constitution and does not have the authority to hold that an Act of the Kansas Legislature is unconstitutional. Accordingly, the Appeals Board will interpret and enforce the provisions of K.S.A. 44-510d(a)(13) as enacted. Therefore, because the date of accident is November 18, 1993, the right shoulder injury is treated as a "scheduled injury" and claimant is entitled to receive permanent partial disability benefits for the stipulated 15 percent functional impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated November 29, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Christopher J. McCurdy, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director